FILE COPY

In The
Supreme Court of the United States

October Term 1960

No. 210

RICHARD GARVIN, EVERETT GARVIN, Also Known as E. C. (PETE) GARVIN, JOHN B. GARVIN, MADGE GARVIN VANDEVER, LILLIAN ESTELLE BIBLE, LUCRETIA MAY RICHARDS, HERBERT GARVIN, ROY D. GARVIN, OMA PEARL GARVIN, WINSTON B. GARVIN AND JAMES ROBERT GARVIN,

Petitioners,

VERSUS

H. C. PETTIGREW,

Respondent.

BRIEF OF RESPONDENT

WALTON STANLEY ALLEN,
Chickasha, Oklahoma,
Attorney for Respondent,

HARRY HAMMERLY,
Chickasha, Oklahoma,
Of Counsel

JULY, 1960.

KING LAW BRIEF CO., COMMERCE EXCHANGE BLDG. OKLAHOMA CITY—PHONE CE 5-2969

INDEX

	PAGE
Statement	1
Authority:	
Rice v. Sioux City Memorial Park Cemetery, U. S. Iowa 1955, 75 S. Ct. 614, 349 U. S. 70, 99 L. Ed. 897	5
Conclusion	5

In The
Supreme Court of the United States

October Term 1960

No. 210

RICHARD GARVIN, EVERETT GARVIN, Also Known as E. C. (PETE) GARVIN, JOHN B. GARVIN, MADGE GARVIN VANDEVER, LILLIAN ESTELLE BIBLE, LUCRETIA MAY RICHARDS, HERBERT GARVIN, ROY D. GARVIN, OMA PEARL GARVIN, WINSTON B. GARVIN AND JAMES ROBERT GARVIN,

Petitioners,

VERSUS

H. C. PETTIGREW,

Respondent.

BRIEF OF RESPONDENT

STATEMENT

This litigation involves an Oklahoma Contract, made in Oklahoma, by Oklahomans and involving property located in Oklahoma.

In 1923 a certain pooling contract was entered into by certain residents of Oklahoma, involving and relating to oil royalties under property in Oklahoma. The material provisions of the contract are set forth in full in the opinion rendered by the Supreme Court of Oklahoma.

The facts and issues involved were stated and outlined by the Supreme Court of Oklahoma in the following language:

> "Subsequnt to the execution and recording of the above quoted contract the plaintiff became the owner of the land which is the subject matter of the present litigation. It consisted of 380 acres out of the lands in said contract described as owned jointly by the Littrells and Pettigrews. The purpose of the litigation is an adjudication of whether or not plaintiff's said property is still burdened with rights which the Garvins acquired therein under the provisions of the contract. In March of 1930 the Garvins conveyed all of the lands owned by them to T. L. Wade by a warranty deed containing no reservations or exceptions. The following year Mrs. Garvin died, leaving as her heirs her husband and the named defendants herein, who were her children and grandchildren. Several months thereafter Mr. Garvin and said T. L. Wade and others executed a quit claim deed to plaintiff to all of the property herein involved. In 1947 Mr. Garvin died, leaving as his heirs the defendants herein.
>
> "Plaintiff brought this suit in January, 1953, seeking to quiet his title as against the heirs of the two Garvins and to determine the heirs of Mrs. Garvin. The defendants answered and claimed, as heirs of Mr. and Mrs. Garvin, to be the owners of the right to participate in all oil and gas production from plaintiff's land in the same manner that their decedents were entitled under the terms of the contract. Trial was had to the court.

sulting in judgment for the defendants to the extent that they were entitled to participate in Mrs. Garvin's estate. Plaintiff's motion for a new trial was sustained, and the defendants have perfected this appeal.

"Ordinarily, in reviewing the action of the trial court's order in sustaining motion for a new trial, it is unnecessary for this court to determine the issues on the merits. But, in the instant case only a pure question of law is involved. In the order appealed from, the trial court gave the following reasons therein as grounds for the decision granting a new trial, to-wit:

"* * * said contract of May 10, 1923, involved herein, under which the defendants claim herein and on which they claim, was and is entirely void and ineffective for any purpose under the rule and holding as announced and set forth in the case of *Lathrop* v. *Eyestone*, 170 Kan. 418, 227 P. 2d 146, and because such contract was and is ambiguous and uncertain and violates the rule against perpetuities and too remote vesting * * *."

After the above statement of facts the Supreme Court of Oklahoma commented as follows:

"The contract here involved constituted a pooling agreement. It could not have been a conveyance of a mineral interest. Nowhere does there appear therein a granting clause of any kind. Nor was it an assignment of royalties in perpetuity. There was no word of assignment in it nor was any duration stated. *Snider* v. *Snider*, 208 Okl. 231, 255 P. 2d 273. Defendants in their brief argue at length the importance of the provision that the contract with all its rights and privileges should inure to the benefit of the heirs, executors, administrators and assigns of the parties. But, as pointed out in the *Snider* case, *supra*, that is merely one of the provisions necessary for assignment of royalties in perpetuity. The others are lacking. In addition, the contract specifically provided 'each party thereto disclaims any

interest in that portion of the above described lands belonging to each of the other parties hereto.'

"After Mr. and Mrs. Garvin conveyed to Wade they owned no royalty to be contributed to the pool. Having nothing to contribute, they were not entitled to further participate. A very similar situation was before the Kansas Court in the case of *Hover v. Cleveland Oil Co.*, 150 Kan. 531, 95 P. 2d 264, and, because the reasoning therein contained is so peculiarly applicable to the case here, we quote it at length as follows:

"'The very essence of the agreement was that the contracting parties were owners of adjacent properties suitable to be explored and exploited for oil and gas, and that any resulting royalties should be divided proportionately with their respective acreages. When the Hovers parted with their property what did they have to contribute to the common pool of possible royalties? Nothing. The agreement had quite properly provided that the oil royalties should be shared until it was changed by the parties. But that result would follow when they sold their property if the agreement had not mentioned it. After the Hovers disposed of their property there was no possibility that the Boyersmiths could thereafter get any benefit from the agreement of 1927. It was of no consequence that the cattle company filed a disclaimer and that its managing officers knew of the agreement of 1927 between the Boyersmiths and Hovers. They could have had no concern with that agreement. Neither was it of any significance that the Hovers continued to receive a portion of the Boyersmith oil well royalties for several years after 1931.'

"To the same effect, but not nearly so parallel is the case of *Merrill Engineering Company v. Capital Nat. Bank of Jackson*, 192 Miss. 378, 5 So. 2d 666. Upon a thorough investigation we find no case in any jurisdiction where parties to a pooling agreement were permitted to participate in the production of minerals from other parts of the pool after they parted with title to the lands

they agreed to contribute to the pool unless such lands had first been released therefrom. Equity demands that conclusion."

The above opinion from the Supreme Court of Oklahoma sets out the issues involved and considered by the court and clearly demonstrates that there is a total lack of any Federal question involved.

We recognize that Certiorari is a matter of judicial discretion, and that same will be granted where there are special and important reasons therefor, or where a state court has decided a Federal question of substance which has not heretofore been decided by this Honorable Court, or rendered an opinion contrary to a decision of this Honorable Court.

We believe the decision of the Supreme Court of Oklahoma clearly demonstrates that no Federal question could possibly be involved; it is not a decision contrary to a decision of this Honorable Court, and certainly it is not a question of general importance.

See *Rice* v. *Sioux City Memorial Park Cemetery*, U. S. Iowa 1955, 75 Sup. Ct. 614, 349 U. S. 70, 99 L. Ed. 897.

CONCLUSION

We have not attempted to brief this case on the merits, for we think it is so lacking in the essentials necessary for this Honorable Court to assume jurisdiction that the petition for Certiorari should be and will be denied.

Respectfully submitted,

WALTON STANLEY ALLEN,
Chickasha, Oklahoma,
Attorney for Respondent;

HARRY HAMMERLY,
Chickasha, Oklahoma,
Of Counsel.

JULY, 1960.